

# LICENSEE

News and Updates from the Virginia Department of Alcoholic Beverage Control, Spring/Summer 2009, vol. 15, no. 2

## ABC Seeks Mixed Beverage Licensees for Food-to-Beverage Ratio Pilot Project

*Interested Licensees Must Send Written Request by August 1*



ABC is launching a two-year pilot project to test an alternative method of calculating the food-to-beverage ratio for mixed beverage licensees. The pilot program was created to address concerns that some restaurants are having difficulty meeting the current food-to-beverage ratio.

Any mixed beverage licensee in Virginia is eligible to participate.

During the pilot program, participating licensees will be offered an alternative compliance method. Rather than comparing the percentage of food sales dollars to mixed beverage sales dollars, participating licensees will be able to comply by selling \$350 of food per proof gallon of alcohol purchased from ABC.

More information about this program is provided inside this newsletter.

(See "Pilot Project Q&A" on page 3)

## New Compliance Tools Available

The Ask 4 ID poster and stickers accompanying this issue of the Licensee are two parts of a new cooperative effort aimed at preventing underage sales. The third component of the campaign is a four minute training video that will be incorporated into various instructional settings and available through many of the Ask 4 ID partner organizations which include: Virginia ABC, DMV, National Alcohol Beverage Control Association (NABCA), Virginia Hospitality and Travel Association, Virginia Petroleum, Convenience and Grocery Association, and Virginia Retail Merchants Association. Many thanks to Richmond-area licensees Siné and Fas Mart for generously providing

(continued on page 11)



The Ask 4 ID poster and stickers are enclosed with the Licensee newsletter.



The Virginia Department of Alcoholic Beverage Control (ABC) • [www.abc.virginia.gov](http://www.abc.virginia.gov) • Balancing effective public safety, excellent customer service and a reliable source of revenue.

# LICENSEE

Spring/Summer 2009 • Volume 15, Number 2

*Licensee* is a quarterly publication for licensees of the Virginia Department of Alcoholic Beverage Control (ABC).

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Virginia ABC is online at [www.abc.virginia.gov](http://www.abc.virginia.gov).

Virginia ABC is . . .

- a public safety agency with law enforcement responsibilities.
- a major source of revenue for the Commonwealth.
- an efficient retail business.
- a provider of educational and prevention programs.
- an administrative hearing agency.



**VIRGINIA DEPARTMENT OF  
ALCOHOLIC BEVERAGE CONTROL**



Governor  
Timothy M. Kaine



## Message from Enforcement



Francis J. Monahan,  
Director, ABC Bureau  
of Law Enforcement

On March 7th, Virginia ABC turned 75. While the ABC Bureau of Law Enforcement's core mission as a public safety entity has remained relatively constant for 75 years, we are dedicated to innovation and implementing changes that will improve compliance, efficiency and customer service. If you're a history buff, you may be interested in viewing the timeline, archival photos and retrospective posted on the ABC Web site. However, instead of looking back, I want to highlight a few important initiatives launched during this milestone anniversary year.

In partnership with DMV, funded by grant money from the National Alcohol Beverage Control Association (NABCA), we've moved quickly to create the "Ask 4 ID" campaign. The campaign is designed to serve the dual purposes of decreasing underage sales of alcohol and tobacco, and familiarizing licensees with the new Virginia driver's license and identification card. One of the ways we can measure the impact of this program is through our compliance checks.

I realize that discussions of compliance rates may sound like "ABC's broken record," however, consider that during Fiscal Year 2008, of the 1,489 charges filed by the Bureau of Law Enforcement 634 (or 43%) were for sale of alcohol to underage buyers. Since ABC began conducting Underage Buyer Program (UAB) visits about 10 years ago, compliance rates have improved dramatically. This year they've slipped slightly so we need to work together to get these numbers trending back up. What's been most frustrating from day one is that 60-70 percent of people who sold alcohol or tobacco to an underage buyer requested ID, looked at an ID that showed the buyer to be significantly underage, but made the sale anyway! That's why we're excited about this new initiative.

The importance of being familiar with Virginia IDs cannot be overstated. With the Virginia DMV cards' "Under 21 Until" and "Under 18 Until" features, alcohol sellers and servers don't have to do a mathematical computation to determine whether a person is underage for alcohol or tobacco. A new "Ask 4 ID" training video/public service announcement will further illustrate this point.

*60-70 percent of people who sold alcohol or tobacco to an underage buyer requested ID, looked at an ID that showed the buyer to be significantly underage, but made the sale anyway!*

The training video is linked to a second new initiative launched this year. ABC is now on YouTube. Our first video clips feature the very serious topic of substance abuse among older adults and the dangers of mixing alcohol with prescription and over-the-counter medications. "The Best is Yet to Come" is a 30-second TV commercial funded by a grant from the Virginia Department of Health, Division of Injury and Violence Prevention.

The "ASK 4 ID" training video/PSA is also on YouTube. We believe utilizing YouTube and other new media tools will enhance communication efforts and will be especially helpful to visual learners who don't process information optimally by reading an article or instruction manual. As always, we welcome your comments and ideas.

Check out the clips at [www.YouTube.com/vaabc](http://www.YouTube.com/vaabc). For more information about the Alcohol and Aging initiative or "ASK 4 ID" campaign, please visit our Web site. If you have a comment or would like to suggest a topic for a new training video, e-mail the Licensee newsletter editorial board at [pubrel@abc.virginia.gov](mailto:pubrel@abc.virginia.gov) or call (804) 213-4413.

# Food-to-Beverage Ratio Pilot Project Q&A

Following is an interview with ABC's Chief Operating Officer, W. Curtis Coleburn, the architect of the pilot project.

**Q: When will the pilot project begin?**

A: As soon as participants are identified after August 1, 2009.

**Q: Is ABC looking for licensees to participate? If so, how do they become involved and who should they contact?**

A: Any mixed beverage licensee is eligible to participate, and ABC encourages licensees across the state to participate in order to ensure a good cross-section of businesses in all geographic areas of the Commonwealth. Licensees desiring to participate should send a written request to W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, Post Office Box 27491, Richmond, Virginia 23261, by August 1, 2009.

**Q: How many licensees are needed to participate in the project?**

A: There is no particular minimum number needed, but the more who participate, the more accurate the analysis of the results.

**Q: What qualifications are necessary to participate?**

A: No qualifications, just be a mixed beverage licensee.

**Q: What is the history of the food-to-beverage ratio law? When was it drafted?**

A: The food-to-beverage ratio was created when liquor by the drink was originally allowed in Virginia in 1968.

**Q: What was its original purpose?**

A: The General Assembly made a policy decision that mixed drinks should be served in restaurants, not bars or taverns. The food-to-mixed drink ratio is intended to make sure that mixed drink establishments are restaurants and do not become mere "watering holes."

**Q: Has it been amended at any time through the years?**

A: It has been amended several times. Originally, the requirement was that the sale of full meals must exceed the sale of all alcoholic beverages. In 1974, the term "full" was deleted from the description of meals. In 1980, the reference to meals was changed to "food" and the ratio was reduced to 45%. At that time food prepared and consumed on the premises of a restaurant had to constitute at least 45% of the total of all alcoholic beverages and food sold. In 1990, the current version of the ratio was adopted, with beer and wine removed from the calculation. Today, food prepared and consumed on

the premises of the restaurant must constitute at least 45% of the total of food and mixed beverages.

**Q: Why is the General Assembly considering amending the ratio law now?**

A: In recent years, concerns have been raised that mixed beverage licensees are having difficulty meeting the ratio as prescribed in the current statute. Between the 2008 and 2009 sessions of the General Assembly, subcommittees of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services met jointly to consider several issues related to ABC law, including the food-to-beverage ratio.

Licensees indicated that one of the problems with the current law is that some restaurants had trouble maintaining the proper ratio because liquor prices have increased and consumers are ordering more expensive cocktails. Although serving more expensive alcohol did not result in increased consumption, the additional price required more food sales to stay in compliance. The subcommittees felt that a ratio based upon alcohol volume rather than dollars of mixed beverage sales would help alleviate this possible problem.

**Q: How will the rules of the pilot program differ from current law?**

A: During the pilot program, participating licensees will be offered an alternative compliance method. Rather than comparing the percentage of food sales dollars to mixed beverage sales dollars, participating licensees will be able to comply by selling \$350 of food per proof gallon of alcohol purchased from ABC.

**Q: What is a proof gallon?**

A: A "proof gallon" is defined as one gallon of 100 proof spirits, and each participating licensee would be required to generate at least \$350 in food sales per proof gallon of spirits purchased from the ABC Board. For example, if a licensee buys 10 gallons of vodka from ABC at 100 proof, it would have to sell \$3,500 in food to meet the ratio.

**Q: How will this alternative method be an improvement?**

A: Since the pilot project target food sales amount is based upon a sample of actual sales last fiscal year by licensees, it should not make a significant difference in the food requirements for most licensees. The idea behind the pilot project was to establish a food requirement approximately equal to that required by the current 45% ratio. However, if a licensee sells a higher than average volume of more expensive drinks, compliance could be easier.

**Q: What can a licensee include in its food ratio?**

A: Food and non-alcoholic beverages prepared and consumed on the premises.

**Q: Is "take out" or delivery food included in the food ratio?**

A: No.

**Q: Are wine and beer included in the beverage ratio?**

A: No, wine and beer would not be included in the calculation. This only applies to distilled spirits (vodka, whiskey, etc.).

**Q: Will the pilot project measure alcoholic beverages by proof gallon of spirits purchased from the ABC Board, or proof gallon of spirits sold to customers?**

A: Purchased from the Board.

**Q: Will participating licensees be penalized if they do not meet the ratio described in the pilot project?**

A: Licensees will be in compliance if their food sales qualify under either the current ratio or the \$350 per proof gallon amount. A licensee that fails under both tests would be subject to disciplinary action.

**Q: How often will the ABC Board monitor its findings with participating licensees?**

A: Each participating licensee has a license year and a scheduled time for submitting sales figures on the Mixed Beverage Annual Review (MBAR) form. When the form is submitted, ABC will determine whether the food sales meet the qualifications. When the MBAR form of a participating licensee has been reviewed, they will be notified of the result.

**Q: When will the pilot project wrap up?**

A: The ABC Board will report its findings and any recommendations based on the results of the project to the Chairs of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services on or before July 1, 2011.

**Q: Who can I contact if I have additional questions?**

A: Contact Lori Catlett-Shaffer by e-mail or telephone at [lori.catlettshaffer@abc.virginia.gov](mailto:lori.catlettshaffer@abc.virginia.gov) or (804) 213-4627.

—Kathleen Shaw, ABC Public Affairs

[www.abc.virginia.gov](http://www.abc.virginia.gov)



# Highlights of the 2009 Virginia General Assembly Session

By Jeffrey L. Painter, Chief Administrative Officer

After the scheduled 46-day session, the 2009 Virginia General Assembly adjourned on Saturday February 28, 2009. Below is a summary of licensee related legislation. You may view the full text, history and votes associated with each bill by visiting <http://leg1.state.va.us>.

## HB 2052 (Gear)/SB 983 (Wagner)

These proposals allow the product Nuvo, a sparkling liqueur, to be served in its original bottle, as long as the container is no larger than 375 milliliters. Currently, serving a bottle of spirits in its original container is prohibited, with the exceptions of the traditional Korean liqueur Soju and, now, Nuvo.

## HB 2071 (Scott, E.T.) / SB 1033 (Hanger)

Amends the Commonwealth's policy regarding local restriction on activities and events held at farm wineries by requiring localities to take into account the agricultural nature of such activities and events.

## HB 2293 (Albo)

Creates a pilot project for certain mixed beverage licensees of the Alcoholic Beverage Control Board that will allow for an alternative calculation of the food-to-beverage ratio based on the volume of "proof gallons" sold. (See separate articles on pages 1 and 3.)

## HB 2523 (Wright)

This proposal adds a new ground for which the ABC Board may suspend or revoke a license. Under the bill, a license may be suspended if the licensee fails to take reasonable measures to prevent (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises from becoming a place where patrons of the establishment commit certain criminal violations and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety.

## HB 2597 (Oder)

Mandates the ABC Board to adopt regulations that require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

## SB 1035 (Hanger)

Would have allowed a person with a concealed handgun permit to carry his/her concealed weapon onto the premises of a restaurant or club and would have prohibited such person from consuming alcoholic beverages while on the premises. For the second year in a row, the Governor vetoed this measure and the Senate sustained the veto.

## SB 1258 (McDougle) / HB 2051 (Gear)

Requires the ABC Board, by regulation, to establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years. The bill provides, however, that no waiver shall be granted by the Board, for a licensee's willful and knowing violation of Board regulations.

## SB 1414 (Puller)

Expands who may apply for and hold an annual mixed beverage special events license to include the Virginia State Fair.

## SB 1445 (Deeds)

Clarifies that the holder of a wine shipper license or beer shipper license may solicit and receive applications for subscription to a wine-of-the-month or beer-of-the-month club at in-state or out-of-state locations for which a license for on-premises consumption has been issued, other than the place where the licensee carries on the business for which the license is granted. ♦



HB 2071 / SB 1033 address the local regulation of licensed farm wineries. For information about Virginia wineries, click [www.virginiawines.org](http://www.virginiawines.org).

# Licensee Violations and Penalties, December 2008–March 2009

As a result of ABC Bureau of Law Enforcement investigations and the ABC hearings process, the following businesses received a minimum sanction of a 10 to 30-day suspension and/or at least a \$500 fine. These sanctions were selected randomly from the Final Decisions and Orders issued from December 2008 through March 2009.

The sanctions are reported to enhance licensees' awareness of potential penalties for violating Virginia's ABC Laws and Regulations. A summary of all Board Final Decisions and Orders is available on our Web site at [www.abc.virginia.gov](http://www.abc.virginia.gov), under "Hearings and Appeals." This data is made available as an information and prevention resource.

## **Convenience Grocery Store/Dublin**

Sold alcohol to underage person; failed to have manager on duty; suspended for 30 days or \$3,500 and 10 days suspended.

## **Drug Store/Leesburg**

Sold to underage person; manager's name not posted; failed to keep license posted in conspicuous place; 44 days suspended or \$4,000 and 10 days suspended.

## **Gourmet Shop/Stanardsville**

Kept unauthorized alcoholic beverages on the premises upon which appropriate taxes have not been paid; accepted civil penalty of \$500.

## **Grocery Store/Scottsburg**

Violation of laws of this Commonwealth applicable to manufacture, transportation, possession, use or sale of alcoholic beverages; failed to comply with ABC Laws and Regulations by maintaining a common nuisance; kept or allowed to be kept alcohol not authorized to sell; sold unauthorized alcoholic beverages; revoked.

## **Restaurant/Blackstone**

Failed to timely submit to the Board the annual review report for 2008; revoked.

## **Restaurant/Falls Church**

Kept or allowed to be kept alcoholic beverages that the licensee was not authorized to sell; failed to obliterate the mixed beverage stamps immediately when emptied; civil penalty of \$2,500 and 7 days suspended.

## **Restaurant/Fredericksburg**

Cannot demonstrate financial responsibility sufficient to meet requirements of the business; defrauded or attempted to defraud the Board and Department of Taxation; establishment ceases to qualify as a restaurant; failed to meet food/MB ratio; failed to submit a complete and accurate annual review; revoked.

## **Restaurant/Lynchburg**

Allowed consumption of alcoholic beverages on licensed premises by intoxicated persons; allowed consumption in unauthorized area; allowed beer for on-premise to be removed from authorized areas; aided and abetted persons in consuming alcohol in an unlicensed public place; made gifts of alcoholic beverages to two persons; accepted suspension for 10 days and \$1,000 civil penalty.

## **Restaurant/Skipper**

Sold alcoholic beverages for consumption on licensed premises between 2 a.m. and 6 a.m.; illegally possessed, distributed, sold or used, or allowed employee to illegally possess, distribute, sell or use marijuana or controlled substance, drug paraphernalia on licensed premises; employed convicted felon; failed to obliterate the mixed beverage stamp immediately; cannot demonstrate financial responsibility; refilled or partially refilled bottles or containers of alcoholic beverages; does not conform to the requirements of the County of Greenville with respect to sanitation, health, construction, or equipment; revoked.

## **Restaurant/Forest**

Cannot demonstrate financial responsibility; issued check dishonored by bank; 30 days suspended and probation for 3 years.

## **Restaurant/Manassas**

Failed to timely submit to the Board the annual report; accepted \$500 civil penalty.

## **Restaurant/Mathews**

Sold an alcoholic beverage in an unauthorized place or manner; aided or abetted persons in consuming alcoholic beverages in an unlicensed public place; allowed consumption by underage person; conducted a happy hour contrary to regulations; 35 days suspended or \$4,500 civil penalty.

## **Restaurant/Berryville**

Sold an alcoholic beverage in an unauthorized place or manner; conducted happy hour contrary to regulations; failed to keep complete and accurate records; cannot demonstrate financial responsibility; failed to timely submit to the Board the annual review report; revoked.

## **Restaurant/Centreville**

Allowed consumption of alcoholic beverages by an underage person (first offense); kept or allowed to be kept alcoholic beverages that the licensee was not authorized to sell; failed to obliterate the mixed beverage stamps immediately when containers were emptied; 45 days suspended or \$4,000 civil penalty.

## **Restaurant/Stafford**

Failed to timely submit to the Board the annual review report; revoked.

## **Restaurant/Norfolk**

Failed to keep complete, accurate and separate records at the place of business available for review; failed to timely submit the annual review; 27 days suspended or \$1,500 civil penalty and 10 days suspended.

## **Restaurant/Winchester**

Allowed consumption of alcoholic beverages on licensed premises other than in designated areas; aided and abetted a person in possessing alcohol underage; allowed intoxicated person to loiter on licensed premises; 90 days suspended or \$2,500 and 21 days suspended.

## **Restaurant/Richmond**

Advertised about or concerning alcoholic beverages contrary to the rules and regulations of the Board; consented to a sale, lease, loan or a gift of money, equipment, furniture, fixtures property, services or something of value in violation of the Code of Virginia and 3 VAC 5-30-10 B; accepted \$1,000 civil penalty.

## **Restaurant/Waynesboro**

Accepted checks in payment for alcoholic beverages which were drawn upon a bank account other than in the name of the licensee making the purchase; accepted \$1,000 civil penalty.

# PROTECT YOUR BUSINESS— REGISTER FOR RSVP AND MART TODAY

**Responsible Sellers and Servers: Virginia's Program (RSVP)** is a three-hour class designed specifically for Virginia's on- and off-premise licensees. RSVP classes are designed for bartenders, clerks, cashiers, waitstaff and other front-line employees. The class covers laws and administrative regulations that govern alcohol sales and consumption, detecting fake identifications, preventing intoxicated customers and managing confrontational situations.

**Managers' Alcohol Responsibility Training (MART)**, is a six-hour class developed for managers of Virginia's on- and off-premise establishments. ABC offers this training program to help managers become more responsible and to better understand Virginia laws and regulations. MART participants will learn about employing minors, using advertising properly, requirements for operating an on- or off-premise licensed business, checking identification and other management-related issues.

Visit [www.abc.virginia.gov](http://www.abc.virginia.gov) to register online! Please remember to include your e-mail address when registering in order to receive an automatic e-mail confirmation, directions to the training site and parking instructions. Directions for each location are also available under the online registration listing for each session on the ABC Web site.

With this **FREE** program you safeguard your business and the community. Register today!



Virginia ABC offers two training programs for sellers and servers (RSVP) and managers and owners (MART) of Virginia's ABC licensed establishments. Special agents from the agency's Bureau of Law Enforcement conduct these training programs to help attendees better understand ABC laws, rules and regulations. Brochures with schedules are mailed to licensees periodically, however, you can always go to the ABC Web site for class listings and to register online.

## 2009 MART & RSVP Summer Schedule

### June (MART Classes)

- 6/2, Lynchburg**  
Lynchburg Regional ABC Office, 20353-A Timberlake Rd., 10 a.m.–4 p.m.
- 6/9, Roanoke**  
Roanoke Regional ABC Office, 2943 D Peters Creek Rd., 9 a.m.–3 p.m.
- 6/10, Eastern Shore of Va.**  
Melfa, Chamber of Commerce, 19056 Parkway Dr., 9 a.m.–3 p.m.
- 6/17, Chesapeake**  
Chesapeake Regional ABC Office, 1103 South Military Hwy., 9 a.m.–3 p.m.
- 6/17, Hampton**  
Old Dominion University / Peninsula Higher Education Center 600 Butler Farm Rd., 10 a.m.–4 p.m.
- 6/17, Richmond**  
Brown Distributing, 7986 Villa Park Dr., 10 a.m.–4 p.m.
- 6/18, Verona**  
Augusta County Government Center, Smith West Board Room, 9 a.m.–3 p.m.
- 6/24, Alexandria**  
Alexandria Regional ABC Office (Fairfax County), 6308 Grovedale Dr., 10 a.m.–4 p.m.
- 6/24, Richmond**  
Brown Distributing, 7986 Villa Park Dr., 10 a.m.–4 p.m.

### July (RSVP Classes)

- 7/14, Danville**  
Danville Community College, 1008 South Main Street, 9 a.m.–12 p.m.
- 7/15, Chesapeake**  
Chesapeake Regional ABC Office, 1103 South Military Hwy., (two sessions) 9 a.m.–12 p.m. & 1 p.m.–4 p.m.
- 7/15, Hampton**  
Old Dominion University / Peninsula Higher Education Center, 600 Butler Farm Rd., 9 a.m.–12 p.m.
- 7/15, Richmond**  
Brown Distributing, 7986 Villa Park Dr., (two sessions) 9 a.m.–12 p.m. & 1 p.m.–4 p.m.
- 7/22, Abingdon**  
Southwest Virginia Higher Education Center, One Partnership Circle, 9 a.m.–12 p.m.
- 7/29, Alexandria**  
Alexandria Regional ABC Office (Fairfax County), 6308 Grovedale Dr., (two sessions) 9 a.m.–12 p.m. & 1 p.m.–4 p.m.

Register online and you will receive an automatic e-mail confirmation and any directions or parking instructions to the training site. For more information, contact VA ABC Education: Phone: (804) 213-4688 / E-mail: [education@abc.virginia.gov](mailto:education@abc.virginia.gov)



# Nudity Regulation Update

By W. Curtis Coleburn, Chief Operating Officer

The Board's regulation governing nudity and sexual activity on licensed premises, 3 VAC 5-50-140, has been the target of several legal challenges over the past few years. Enforcement of the entire regulation, as well as statutes prohibiting nudity at mixed beverage establishments, was enjoined for a period of time. ABC and the General Assembly have amended the statutes and regulations to address the courts' concerns, and except for one minor provision, the regulation and statutes are in full force and effect.

The nudity and sexual conduct rules currently in force include the following:

Entertainers on a platform or stage may not display any portion of the genitals, pubic hair, anus, or the areola of the breast.

Persons other than an entertainer on a platform or stage may not display any portion of the genitals, pubic hair, buttocks, or any portion of the breast below the top of the areola.

Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any sexual act prohibited by law is pro-

hibited on licensed premises.

The fondling or caressing of a person's own or of another's breasts, genitals, or buttocks is prohibited on licensed premises.

There are additional nudity rules for mixed beverage establishments. In a mixed beverage restaurant, no person connected with the business may appear with less than a fully-opaque covering of the genitals, pubic hair, or buttocks, or any portion of the breast below the top of the areola. "Persons connected with the business" include owners, managers or employees, entertainers or other contractors, or a participant in any contest, display, or other event conducted by or at the invitation of the licensed business.

These provisions do not apply to establishments primarily devoted to the arts or theatrical performances when the performances are expressing matters of serious literary, artistic, scientific or political value. ♦

[www.abc.virginia.gov](http://www.abc.virginia.gov)

## ABC ENFORCEMENT CRIMELINE

To report a crime relating to any ABC laws, please call the ABC Enforcement CRIMELINE at (866) 437-3155. You may also visit the ABC Web site, [www.abc.virginia.gov](http://www.abc.virginia.gov), and use the "Violation Complaint Form," available on the home page and under the "Laws and Enforcement" section. We welcome your involvement with ABC's efforts to maintain public safety while providing public service to Virginians.



## SUGGESTIONS & IDEAS

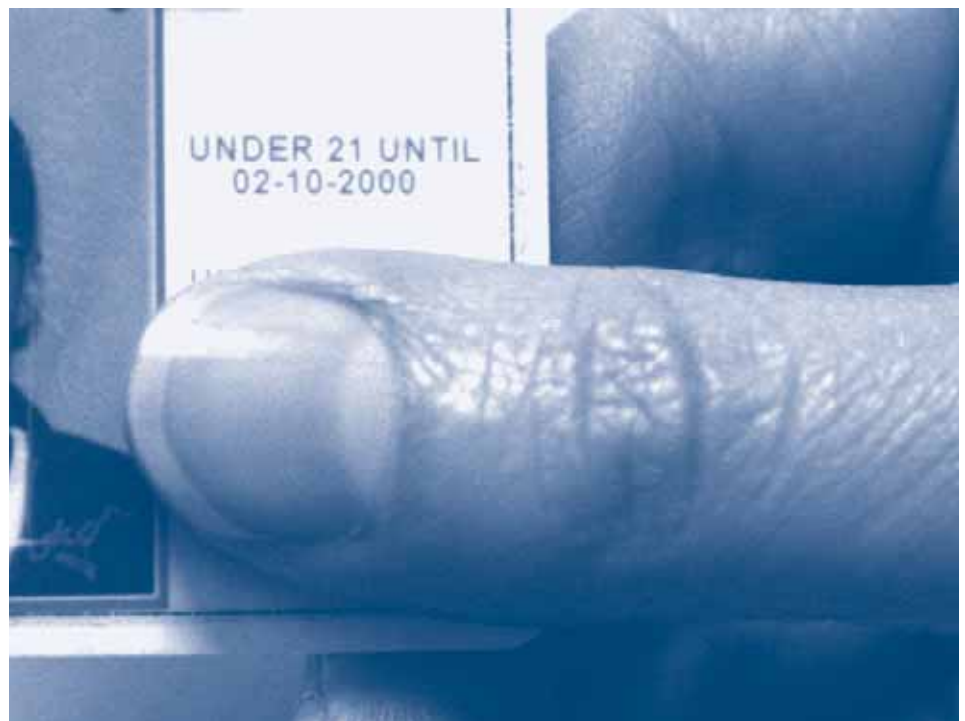
If you have an issue or question you'd like addressed in this newsletter, please send an e-mail to [pubrel@abc.virginia.gov](mailto:pubrel@abc.virginia.gov) or call (804) 213-4413. We're eager to receive your ideas and comments.

—The Licensee Newsletter Editorial Board

## Compliance Tip: Thumb It!

Occasionally people charged with underage alcohol sales will say they looked at the "tobacco date" instead of the "alcohol date." To avoid confusion, when selling alcohol, cover the "UNDER 18 UNTIL" information on a Virginia driver's license or ID card with your thumb, and focus on the "UNDER 21 UNTIL" date. Most importantly, take your time! Don't put yourself at risk for making an underage sale!

Learn all the tips for avoiding underage sales, and other violations, at RSVP and MART classes. ♦



# Credentials, Invoices & Volume Discounts: Bureau of Law Enforcement Updates

By Shawn Walker, Bureau of Law Enforcement Deputy Director

## Agent credentials

In the coming months, special agents will be issued new identification cards and badges to help them identify themselves as employees of the Department of ABC. The first change that you will notice is the color of the badge. Currently, ABC special agents carry a silver badge and the new ones will all be gold in color. Additionally, the credential cards will be receiving a substantial updating and will be combined into one card instead of the traditional two-card credential that special agents currently carry. We want to make sure licensees are up to date with regard to this issue so that they will not be taken by surprise when a special agent presents a new ID and badge.

## Circular letters

Circular letters are guidance documents distributed by the department to clarify issues that are of importance to the operation of ABC licensed establishments in the Commonwealth. The latest circular letters that have been issued relate to invoices and

discounts to retail licensees. Here is a full explanation:

**invoices.** In the past, there has been concern about the combining of wine and beer products on wholesaler invoices to retail licensees. Recently, the standing of the department that all invoicing of wine and beer must be done on separate invoices has been changed. It is now permissible for wholesalers to list wine and beer products on the same invoice as long as those products are separated on the invoices by wine products and beer products.

**discounts to retail licensees.** This is a reprint of Circular letter 09-02 relating to volume discounts:

Section 3 VAC 5-70-150.C of the Board regulation deals with price discrimination by manufacturers and wholesalers. The general rule is that wholesalers cannot discriminate in price among retail purchasers except for three instances:

1. The first exception is "due to a bona fide difference in the cost of sale or delivery." This is primarily where a lower price is charged because the retailer makes volume purchases.
2. The second exception is to "meet an equally low price charged by a competing" manufacturer or wholesaler.
3. A third exception has been made through administrative interpretation, which provides that wholesalers may decline to give a discount in price to a retailer who declines to pass the discount through to the consumer. However, the discount to the retailer cannot be conditioned on the retailer having floor displays or placing media or other advertising.

Additionally, it should be emphasized that chain store operations are not a single retail licensee, but each location is considered a retail licensee. Accordingly, quantity discounts cannot be offered to the chain as a whole, but each location must purchase the minimum to qualify for the discount.

Additionally, there is no difference

between on-premise and off-premise licensees for the purposes of discounts. Discounts can only be offered equally to all licensees regardless of license type. For example, there can be no discount offered to on-premise retailers based on a glass-pour volume because an off-premise retailer could not be offered the same discount. However, a volume case discount could be offered to both on and off-premise establishments because both could benefit from the offer.

Please contact your assigned special agent if you have questions about these, or other, Enforcement-related ABC issues. For questions regarding invoices you may also contact the Tax Management section at (804) 219-2034. ♦



New ABC special agent badges will be gold in color.

## ALCOHOLIC ENERGY DRINKS

ALCOHOL? ENERGY?  
**BOTH?**

LOOKS CAN BE DECEIVING

Many people do not realize that certain energy drinks contain alcohol.

UNUSUAL? UNHEALTHY? Both. "Unusual" factor: ALCOHOLIC DRINKS combine alcohol, caffeine and sugar in a way that is both...  
UNHEALTHY? Factor: Nutrition Facts show 100% alcohol by volume (100% ALC/VOL).

Know what you are drinking. If alcohol is an ingredient, the amount varies by product. As with all beverages containing alcohol, persons must be 21 to purchase alcoholic energy drinks.

ABC

The Alcoholic Energy Drink poster is still available for licensees. To order copies, please call ABC Education at (804) 213-4688 or visit [www.abc.virginia.gov](http://www.abc.virginia.gov).



## New Commissioner Joins ABC Board

Former Delegate Franklin P. Hall began serving as an ABC Commissioner in April after being appointed by Gov. Timothy M. Kaine. Commissioner Hall recently retired from the Virginia General Assembly after nearly 34 years as a legislator. From 1976 to 2009, he represented the 69th House District, which covers parts of South Richmond and northern Chesterfield County. Hall served as the minority leader in the House of Delegates and on multiple committees, including House Appropriations.

During his 40 years as an attorney, Hall has represented clients before the ABC Board. He also has experience in administrative practice before the State Corporation Commission and many other agencies. Hall entered banking in the early 1970s, founding a savings and loan. He opened Commonwealth Bank in 1986 and continues to serve as chairman of the board.

Hall graduated from Lynchburg College; received a master's in business administration from American University; and earned a law degree from American University Washington College of Law. He continues to be active in community and professional organizations. He and his wife Phoebe reside in Richmond and have two adult children, Kim and Franklin, and two grandchildren. Hall takes over the post vacated by Pamela O'Berry Evans, who was elected to a judgeship in Chesterfield County.

Click on [www.abc.virginia.gov](http://www.abc.virginia.gov) for biographical information on Board Chair Esther H. Vassar and Commissioner Susan R. Swecker. ♦



Commissioner Franklin P. Hall, Chair Esther H. Vassar and Commissioner Susan R. Swecker at ABC Central Office in Richmond.

## New Virginia Driver's Licenses

By July 2009, all 74 Virginia Department of Motor Vehicles (DMV) locations statewide will be using a new issuance process and all applicants for driver's license and ID cards will receive newly designed cards. Virginia credentials are valid for five to eight years. As a result, retailers will continue to see two Virginia card formats for at least eight years. The new cards incorporate a number of new security features. Cards for individuals age 21 and over bear an image of the Virginia state capitol building; cards for individuals under 21 bear images of the state flower, the dogwood, and show the dates that the individual turns 18 and 21, to assist retailers curb the illegal sale of tobacco and alcohol to minors. For more information, visit [www.dmvNOW.com](http://www.dmvNOW.com)



# "We Need an Owner, Manager or Assistant Manager To the Phone!"

Beginning in June, representatives from Virginia Commonwealth University's Survey Evaluation Research Lab (SERL) will contact 800 licensees with questions about ABC. Survey participants will be randomly selected from the general licensee database ensuring representation statewide and across the spectrum of licensee categories.

*Beginning in June, representatives from Virginia Commonwealth University's Survey Evaluation Research Lab will contact 800 licensees with questions about ABC.... Topics include ABC's mission, agents, inspections and services, Web site and more.*

Representatives from the Survey Lab will call during day and evening hours and ask to speak with an owner, manager or assistant manager. To accommodate licensees' often hectic work environment and unpredictable hours, surveyors will provide a toll-free number licensees can use at their convenience.

This survey is similar to those conducted in 2002, 2004 and 2006 and is one of several tools the agency uses to evaluate programs and service delivery. Licensee survey topics include: ABC's mission; ABC information, agents and inspections; awareness of and satisfaction with ABC services; importance of ABC services; the Licensee newsletter; Web site usage and an evaluation of ABC stores.

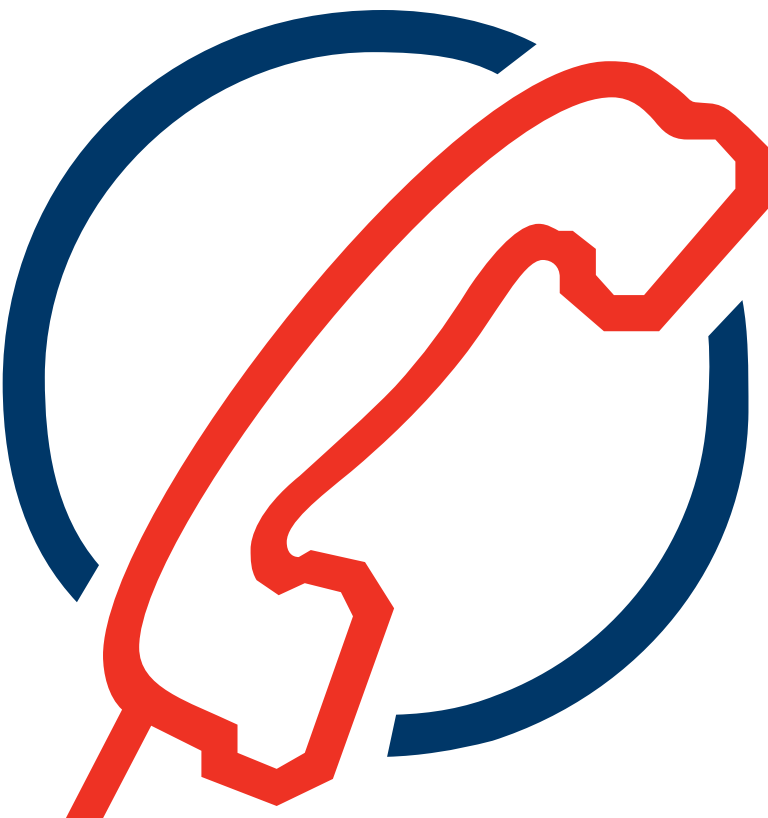
A second survey project is in the very early stages. In an effort to solicit licensee feedback on an ongoing basis, an online survey is being developed in-house with questions relating to customer satisfaction, the application process and attitudes about various prevention programs. More information will be provided as this project progresses. ♦

## Simplified Food Sale Requirement for Grocery and Convenience Stores

By W. Curtis Coleburn, Chief Operating Officer

The ABC Board recently simplified the food sale requirements for grocery store and convenience grocery store licensees, with a regulation amendment effective March 4. To qualify as either a grocery store or a convenience grocery store, a business is required to maintain monthly sales and an inventory of at least \$2,000 in "edible items intended for human consumption," translated as food items normally used in the preparation of meals. Until March 4, this food sale requirement was further complicated by a mandate that the inventory and sales include at least five representative items from each of five basic food groups—dairy, meat, grain, vegetables and fruit.

Recognizing that the food group requirement made both compliance and enforcement difficult and confusing, the Board promulgated an amendment to 3 VAC 5-50-100 to eliminate the food group language. Effective March 4, 2009, grocery store and convenience grocery licensees only have to maintain monthly sales and inventory of \$2,000 of edible items normally used in the preparation of meals, including liquids, without regard to the food groups represented. ♦



their businesses to serve as film sets and to NABCA for underwriting poster and sticker printing costs.

The Ask 4 ID campaign focuses on informing sellers and servers about the age-identifying features on the old and new Virginia driver's licenses and identification cards. To view the training video or order additional posters or stickers, click [www.abc.virginia.gov](http://www.abc.virginia.gov). We hope all individuals who are involved with alcohol and/or tobacco sales, will use these new tools! (Also, see additional information in the "Message from Enforcement" on page 2.) ♦



## Contact the Virginia Department of Health (VDH) for Smoking Ban Information

For information about new legislation governing smoking in Virginia restaurants, please contact the Virginia Department of Health (VDH). The VDH offers a fact sheet with frequently asked questions and contact information. Following are a few highlights: the full fact sheet can be found on VDH's home page or <http://www.vdh.virginia.gov/news/Alerts/SmokingBanFAQs.htm>. ♦

### Can I smoke in a restaurant now?

Yes, if the restaurant has a smoking area. A restaurant with 50 or more seats, however, must provide a non-smoking area sufficient to meet customer demand.

### When does the new law take effect?

Dec. 1, 2009.

### What are the key provisions of the law?

Smoking will be prohibited in restaurants that are open to the public, with a few exceptions.

# Going Green Makes Dollars and Sense

By Philip Bogenberger, ABC Public Affairs

Have you ever thought about what it would take to make your business more environmentally friendly? Increasing numbers of ABC licensed establishments are becoming certified "green" businesses through the Virginia Green program.

Virginia Green is a partnership between Virginia's Department of Environmental Quality (DEQ) and Virginia's tourism industry to promote businesses and events that are certified as environmentally friendly. Now the Virginia Department of Alcoholic Beverage Control is encouraging business owners and event coordinators to check out becoming a green venture.

According to DEQ's Web site <http://www.deq.state.va.us/p2/virginia-green/> the minimum requirements to become a Virginia Green certified restaurant includes:

- Eliminating use of Styrofoam and minimizing disposables;
- Recycling grease;
- Recycling and reducing waste;
- Using water efficiently;
- Conserving energy.

Going green is not just in vogue for being environmental friendly, it also reflects positively on the bottom line.

"Recycling and energy conservation efforts may help many of our licensees experience the same benefits ABC has enjoyed since increasing our environmental programs," ABC Commissioner Susan Swecker said.

ABC had to create a cost center in the budget to show the profit from recycling approximately 40 tons of paper, 11 tons of shrink-wrap and 313 tons of cardboard annually. The agency also generates enough money from recycling pallets to cover packaging supplies for the Central Warehouse.

ABC continues to transition to green cleaning products whenever possible and stores use plastic bags that have a biodegradable additive increasing the rate of decomposition. The next step for ABC is exploring green retail spaces that are more energy efficient and reduce harmful runoff.

While ABC encourages establishments to implement green measures, North Carolina is requiring most licensees to recycle. House Bill 1518 passed the North Carolina legislature in 2005 and became effective last year.

"Going green enhances customer service as many consumers now base their lodging and dining decisions on green establishments, which positively impacts the bottom line for everyone," said Bob Southall, Director of Property Management Services. "Communication and awareness is where the green begins." ♦



An ABC store associate bags a customer's purchase. In 2008, ABC converted to more eco-friendly plastic bags containing a biodegradable additive that significantly reduces composition time in a landfill.

## GOING GREEN

We are looking for licensees who would like to share their "Going Green" experiences in future editions of the Licensee newsletter. Please call or e-mail Jennifer Farinholt at [jennifer.farinholt@abc.virginia.gov](mailto:jennifer.farinholt@abc.virginia.gov) or 804-213-4640.



# ABC VIDEOS NOW ONLINE!

Virginia ABC is now offering training videos, public service announcements and media clips online at [www.youtube.com/vaabc](http://www.youtube.com/vaabc).

## Now Featured: The "Ask 4 ID" PSA

The "Ask 4 ID" PSA, provided on [www.youtube.com/vaabc](http://www.youtube.com/vaabc), complements the poster and stickers accompanying this newsletter. These are all parts of a new cooperative effort aimed at preventing underage sales. See the story on page 1 of this newsletter. (Below: A frame from the video.)



**75th ANNIVERSARY ♦ 1934–2009**  
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